

1 April 4, 2019



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4 **Talbot County Planning Commission**
5 **Final Decision Summary**

6 Wednesday, January 9, 2019 at 4:00 p.m.

7 Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

8 **Attendance:**

9 Commission Members:

10
11 John N. Fischer, Jr., Chairman
12 Paul Spies, Vice Chairman (absent)
13 William Boicourt
14 Michael Sullivan
15 Phillip "Chip" Councill
16

17 Staff:

18
19 Mary Kay Verdery, Planning Officer
20 Miguel Salinas, Assistant Planning Officer
21 Mary O'Donnell, Assistant County Attorney
22 Carole Sellman, Recording Secretary
23
24
25

26 **1. Call to Order**—Commissioner Fischer called the meeting to order at 4:00 p.m.

27
28 **2. Old Business**

- 29
30 a. Major Site Plan—21551 Chesapeake LLC/Wylder Hotel #SP603, 21551
31 Chesapeake House Drive, Tilghman, MD 21671, map 44A, parcel 149; Zone:
32 Village Mixed, John Flannigan, Agent
33

34 Commissioner Fischer stated the meeting is for the purpose of reviewing the
35 Noise Compliance Plan. All other matters related to the Major Site Plan and
36 Special Exception were resolved at the Planning Commission meeting on January
37 2, 2019.
38

39 Commissioner Fischer stated the revised Noise Compliance Plan has improved
40 and asked if there were any comments from the Staff. Mr. Salinas stated the
41 applicant is in California and could not attend, but wanted to dial in on speaker
42 phone; which was set up for such purpose. Mr. Flannigan was dialed in.
43

44 Commissioner Boicourt stated Mr. Flannigan addressed the comments that Ms.
45 Verdery sent via email, which were items addressed in the previous Planning
46 Commission Meeting.
47

48 Commissioner Councill stated that one of the items requested was a vendor
49 contract. Mr. Flannigan stated it was in the package. Ms. Verdery stated the
50 contract requires both signatures.
51

52 Mr. Flannigan stated he apologizes for not being in attendance, but he and his
53 staff have worked diligently with County staff for the last five days to produce a
54 revised product.

55
56 The Commissioners noted they are satisfied with this product.
57

58 Kristine Seymour, Director and General Manager, Wedding Events, Sales
59 Manager, Debra Becker, Accounting Administrative Supervisor also spoke on the
60 revised Noise Compliance Plan.
61

62 Gerald Henning, Acoustical Consultant, 541 Anderson Ave, Rockville, MD,
63 stated he was asked to provide information on behalf of Citizens for Sustainable
64 Communities. He looked over the Noise Compliance Plan and has issues. He
65 noted there is nothing in the plan to address crowd noise; depending on the event
66 and number of people it is quite likely the 60 dBA limit could be exceeded. Mr.
67 Henning suggested if this is approved, the applicant should make careful records
68 of all the different aspects of the events, number of people, type of event and, if in
69 fact levels are exceeded because of the crowd, then they will know this type of
70 event cannot be held due to its size. He also noted the County Code says noise
71 should be measured on slow response and an average, but it does not say what the
72 average is. He stated the average should be specified by applying a continuous
73 measurement; recording one minute averages over the course of the event and
74 also recording the maximum levels and then taking the average. Mr. Henning
75 pointed out that the plan, which proposes to measure every half hour, is not
76 continuous and someone could measure at a quieter or noisier time and not every
77 half hour.
78

79 Commissioner Fischer stated he thought the Code specified a continuous
80 measurement for noise. Ms. Verdery responded that the equipment will measure
81 continuously, but there will be a log where a measurement will be taken every
82 half hour. Mr. Flannigan responded that his equipment allows them to record
83 during the event and also picks up all noise including crowd and music. Mr.
84 Salinas stated he was under the impression it was continuous monitoring
85 equipment that was being used in the various locations, but you were recording
86 every 30 minutes.
87

88 Ms. Seymour stated the machine sends the data to a computer file, a CSB or an
89 excel document, and you can set it send periodically at the chosen output times.
90 Commissioner Fischer asked if the County Code Enforcement Officer can walk
91 up and read it with their eyes. Ms. Seymour said you can walk up and read it at
92 any time at the meter or you can go to the computer and see what the
93 measurement is at that particular time or at the output times that had been
94 previously chosen. Mr. Flannigan stated the system has a sound check element
95 where you establish a dBA level and it is set not to go above.
96

97 Commissioner Spies asked if the technology is monitoring the event and
98 controlling their noise levels as he thought the County was responsible for
99 monitoring the noise levels; he did not think Wylder was responsible for
100 monitoring their own noise levels, for legal reasons, but would serve as a means

101 to be well-educated on not incurring violations to the noise ordinance. Mr. Salinas
102 responded the Noise Compliance Plan gives them the ability to work with the
103 vendor to make sure there are other means to make sure they comply with the 60
104 dBA at the property line. Mr. Salinas noted that Mr. Flannigan mentioned if there
105 is consistent monitoring, they can go to the DJ or the band and ask them to turn
106 down the volume to ensure there are no violations.

107
108 Commissioner Boicourt asked whether Mr. Henning's comments referred to 60
109 dBA as being an average. Commissioner Councell noted the Code says maximum
110 decibels shall not exceed 60 dBA. Mr. Henning responded that the Code says the
111 average shall not exceed 60 dBA. He stated the ability to send data right to the
112 internet to a website that can be looked at by residents and the County, preferably
113 in real time, could make compliance much more transparent. Mr. Henning noted
114 that although equipment to do so is more expensive, it offers more transparency.
115 Commissioner Sullivan responded that he feels that suggestion is excessive and
116 the reality is to have the applicant to obey and monitor and make sure there are no
117 complaints or violations or there are consequences. Commissioner Spies stated it
118 is not Mr. Flannigan and Wylder's obligation to fix a Noise Compliance Plan that
119 the County or residents feel is faulty, rather his obligation is to meet what our
120 current Code states are the requirements. Commissioner Boicourt stated it is not
121 Mr. Flannigan's fault there is a deficiency in the Code.
122

123 Mr. Henning stated they are also trying to establish what is a violation. Ms.
124 Verdery described how most of the County's noise meters give an average
125 reading for the amount of time we use them at a location. She stated that staff has
126 taken noise readings at other locations for other purposes and a plane will go
127 overhead or a bird chirps, but an average is used because of those unique
128 circumstances that occur. She further stated that was the goal and the intent of
129 writing that into the Code.
130

131 Commissioner Fischer stated the objective is 60 dBA at the boundary of the
132 property and the Noise Compliance Plan is to give us confidence that the vendor
133 will comply. He noted that see plan submitted today ensured how they are going
134 to do it.
135

136 Mr. Henning stated there should be instruments to measure at different locations
137 and he has seen a plan where they have events at the big tents and they have
138 instruments at two locations. But he noted that on the plan for the restaurant they
139 have one instrument that is 150 feet away and there is no proposed measurement
140 instrument at the property line next to the stage. He further stated that it looks like
141 there are not going to be permanent equipment set ups and it's important that
142 measuring devices are located to catch maximum levels at the property lines. He
143 also noted that it's good to calibrate the meters before and after an event with a
144 field calibrator. Commissioner Spies asked whether they should be calibrated for
145 every event. Mr. Henning responded that it would be a quick way in the field to
146 check and ensure the instrument is functioning properly and that a more detailed

147 calibration should be done in a laboratory once a year depending on
148 manufacturer's suggestion.

149
150 Mr. Henning stated there was a statement in the plan that the applicant would
151 keep the low frequency control, but sound levels below 70 dCB can also be heard.
152 Mr. Henning gave a description of dCB levels.

153
154 Mr. Flannigan wanted to speak for the record that Mr. Henning is hired and
155 speaks for the Political Action Committee and his testimony at this technical level
156 is not relevant to the meeting or the Code passed in 2018; the purpose of the
157 meeting was to present a more comprehensive Noise Compliance Plan.

158
159 Commissioner Fischer thanked Mr. Flannigan and stated the testimony was
160 worthwhile to the Commission.

161
162 Commissioner Spies asked if the dCB issue was addressed when the Noise
163 Ordinance was discussed. Commissioner Councell responded that it was not
164 addressed and the County requiring Mr. Flannigan's Noise Compliance Plan to do
165 so is above and beyond the Code. Commissioner Boicourt stated he agreed with
166 Commissioner Councell. Commissioner Sullivan stated he wished they had Mr.
167 Henning's specificity when they created the noise ordinance. He noted, although
168 they could amend the Code in the future, as long as Mr. Flannigan adheres to the
169 Code as it exists today, that is what should be required. Commissioner Spies
170 asked if Wylder could track dCB levels for the next year and if it is an issue, it
171 might be something the County would need to put in the Code in the future.

172
173 Commissioner Fischer asked if there is language about calibration. Ms. Seymour
174 stated the equipment will be calibrated as per the manufacturer's recommended
175 time period. She also stated all of manufacturers recommended annual calibration.

176
177 Commissioner Fischer asked for public comment:

178
179 Public comments were made by Ms. Leslie Steen and Doak Conn regarding the:
180 need for monitoring equipment to reduce calls to the Sheriff and the County;
181 importance of averaging and calibration to sound monitoring equipment; need for
182 monitoring equipment for the restaurant to be at the closest point to the property,
183 placed near the stage platform for the restaurant as the platform is up against the
184 water and faces a lot of homes; and need for calibration checks to be done when
185 shifts start and end.

186
187 Mr. Flannigan stated he will keep the bass levels from being excessive.
188 Commissioner Councell suggested a noise level shutoff switch.

189
190 Commissioner Fischer noted that regardless of bass or treble, you can't go above
191 60dBA.

193 Commissioner Fischer asked if Ms. Seymour could describe the manufacturer's
194 calibration requirements. Ms. Seymour responded that annual by an audio
195 professional is recommended by manufacturer. Commissioner Fischer asked if
196 they were going to calibrate machines before and after each event. Ms. Seymour
197 responded that it was not required under the Code. Ms. Verdery stated the County
198 calibrates the equipment annually but they field test and calibrate it before every
199 use. Commissioner Fischer asked if they are agreeable to calibrating their
200 equipment before each use. Ms. Becker responded they can do a field test, but the
201 equipment they have cannot be self-calibrated.
202

203 Commissioner Spies stated his concern is not so much with the calibration,
204 because if they are over, he is hoping the Inspector comes and they will be written
205 up. He is more concerned with them not having enough monitors or them not
206 being in the right places. The idea of having uncalibrated equipment only hurts
207 their business operation.
208

209 Commissioner Cuncell stated he would want to have his equipment accurate, it
210 could be under as well as over. He is satisfied they have done what we asked them
211 to do.
212

213 Ms. Becker stated they are using multiple meters and all of them are performing,
214 the idea of all of them failing in the same direction is very minimal. The meters
215 are not the type that can be manually calibrated and they must be sent to the
216 manufacturer to calibrate.
217

218 Commissioner Spies stated he is not as concerned about the instrument not being
219 calibrated properly, but is more concerned about not having enough equipment to
220 monitor.
221

222 Commissioner Fischer asked for the Commission's thoughts were about the meter
223 along the waterfront. Commissioner Spies stated the citizens made a valid point
224 and asked if there was a way to move the equipment to the corner of the L-shaped
225 pier to make sure high noise levels are not travelling across the water.
226 Commissioner Cuncell responded he does not totally disagree with the
227 suggestion, but noted that the speakers on the stage are faced towards the property
228 line that is 150-160 feet away. Ms. Becker stated the speakers will be faced
229 toward the brick patio which is where the majority of the people will be gathered
230 and noted that the covered deck is a restaurant. Commissioner Boicourt stated he
231 was in favor of Commissioner's Spies' plan as putting it out on the dock offers
232 some protection.
233

234 Commissioner Cuncell asked staff whether a neighbor across the water could
235 call the County if they believe they are excessive noise levels above 60 dBA. Mr.
236 Salinas confirmed that the County could be contacted in such a situation.
237

Commissioner Fischer noted they have the option to request the monitor be moved from the northeast edge to the pier. Commissioner Councill responded they would get a more accurate reading where it the equipment is proposed.

Commissioner Councill moved to accept the Noise Compliance Plan for 21551 Chesapeake, LLC (Wylder Hotel), 21551 Chesapeake House Drive, Tilghman, Maryland, as presented. Commissioner Spies seconded the motion. The Motion carried 3-2 (Fischer & Boicourt against).

Commissioner Fischer stated he might have supported the motion if they were required to calibrate sound equipment before and after every use and if the location of the sound equipment for the restaurant was changed to the pier. Commissioner Boicourt concurred.

Mrs. Verdery explained that a new member had been appointed, Michael Strannahan, who will be available for the February meeting. She stated that there are no items scheduled for the February meeting and asked if the Commission wanted to postpone the selection of officers to the March meeting.

Commissioner Boicourt moved to delay the vote of officers; Commissioner Spies seconded the motion. The motion carried unanimously (5-0).

3. New Business - None.

4. Discussion items

5. Staff Matters

- a. Ms. Verdery noted the Council appointed the fifth member to the Short-Term Rental Review Board; Mr. Jack Hall. She stated that the first meeting will be January 18th at 1:00 p.m. to go over their roles, responsibilities, By-laws and other administrative duties. She also stated new applications are coming in and additional meetings will be scheduled.
- b. Commissioner Fischer asked how the contract with STR Helper is working to identify short-term rentals operating without licenses. Ms. Verdery responded the program was working very well and a significant number of letters had been sent to property owners operating without licenses. Mr. Spies asked what the number was. Mr. Salinas responded that initially it was in the twenties. Ms. Verdery stated the number might increase in the summer. She also stated the next phase will be on-line, where a property owner can submit an on-line application or a complaint. Commissioner Spies asked how long we had the program. Mr. Salinas responded that the County is in a pilot program until August and then an evaluation will be done to determine whether the County will continue with the program.

6. WorkSessions

284 **7. Commission Matters**

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286 **8. Adjournment**—Commissioner Fischer adjourned the meeting at 5:20 p.m.

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